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4 USA,
5 Plaintiff,
6 v.
7 TUAN NGOC LUONG,
8 Defendant.
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10 Case No. 15-cr-00178-HSG-1
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15 **ORDER DENYING MOTION FOR
16 SPECIFIC UNANIMITY INSTRUCTION
17 AND VERDICT FORM**
18
19 Re: Dkt. No. 134
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21 Defendant moves for a specific unanimity instruction and verdict form, specifying the
22 basis for the jury's Hobbs Act jurisdictional finding. Dkt. No. 134. The Court **DENIES**
23 Defendant's motion.

24 “[A] jury in a federal criminal case cannot convict unless it unanimously finds that the
25 Government has proved each element.” *Richardson v. United States*, 526 U.S. 813, 817 (1999).
26 Where a statute consists of several elements, a specific unanimity instruction could be necessary to
27 ensure that the jury has agreed unanimously and separately as to each element. *Id.* at 818. The
28 jury, however, “need not always decide unanimously which of several possible sets of underlying
brute facts make up a particular element.”¹ *Id.* at 817.

29 Here, the two possible bases for the Government’s jurisdictional theory prove the same
30 Hobbs Act element: whether the robbery affected interstate commerce. Thus, under *Richardson*,
31 there is no requirement that the jury agree to the specific means by which interstate commerce was
32 affected. *See United States v. Hofus*, 598 F.3d 1171, 1176 (9th Cir. 2010) (“[A]n indictment may

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United States District Court
Northern District of California

1 allege that a defendant committed an offense by one or more specified means, but ‘[w]e have
2 never suggested that in returning general verdicts in such cases the jurors should be required to
3 agree upon a single means of commission, any more than the indictments were required to specify
4 one alone.’” (quoting *Schad v. Arizona*, 501 U.S. 624, 632 (1991)); *see also United States v.*
5 *Renteria*, 557 F.3d 1003, 1008 (9th Cir. 2009) (holding that because the language of the count in
6 issue, “used in interstate and foreign commerce, and in an activity affecting interstate or foreign
7 commerce,” describes a single element, a specific unanimity instruction was not required); *United*
8 *States v. Steele*, 543 F. App’x 703, 704 (9th Cir. 2013) (holding the district court did not err in
9 refusing to give a unanimity instruction as to the factual basis underlying the interstate commerce
10 element: “The jury was not required to agree unanimously on which incident of interstate travel
11 Steele caused”).

12 Because “a general instruction that the verdict must be unanimous” is ordinarily sufficient
13 to protect a defendant’s rights, *see United States v. Anguiano*, 873 F.2d 1314, 1319 (9th Cir.
14 1989), Defendant’s motion is **DENIED**.

15
16 **IT IS SO ORDERED.**

17 Dated: 1/27/2016

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21 HAYWOOD S. GILLIAM, JR.
22 United States District Judge

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